IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

WEDNESDAY, THE 6TH DECEMBER 2006 / 15TH AGRAHAYANA 1928

WP(C).No. 14535 of 2006(E)

PETITIONER:

RAJAN, AGED 56 YEARS,
S/O.RAMAN, ARYAPPILLIL HOUSE,
PERUMBADAVOM.P.O, AVARMA,
KOTTAYAM DISTRICT.

BY ADV. SRI.A.X.VARGHESE

RESPONDENTS:

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1. STATE OF KERALA,
REP. BY THE SECRETARY,
HOME DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM.

2. DIRECTOR GENERAL OF POLICE,
THIRUVANANTHAPURAM.

3. SUB INSPECTOR OF POLICE,
VELLARIKUNDU POLICE STATION,
KASARAGOD.

BY SR. GOVERNMENT PLEADER SRI K.C. SANTHOSH KUMAR.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 20-10-/2006, THE COURT ON 6-12-2006 DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXTS:

EXT.P1: PHOTOCOPY OF THE POST MORTEM REPORT DATED 6-1-2005.

EXT.P2: PHOTOCOPY OF THE FIR (RELEVANT PAGES) DATED 5-1-2005.

EXT.P3: PHOTOCOPY OF THE NEWS ITEM REPORTED IN MALAYALA MANORAMA.

EXT.P4: PHOTOCOPY OF THE REPRESENTATION SUBMITTED BY THE DECEAD'S WIFE TO THE IST RESPONDENT.

//TRUE COPY//

K.R. UDAYABHANU, J.

W.P.C.NO.14535 OF 2006

DATED THIS THE 6TH DAY OF DECEMBER 2006

JUDGMENT

The petitioner, who is the brother of the deceased Santhosh Kumar, has sought for appointment of the special investigation team to take up the investigation in the matter. The incident is with respect to the death of Santhosh Kumar, Sub Inspector of Vellarikundu police station, who was found dead with gun shot injuries on 4-1-2005 in the night. It is stated that the deceased took charge at the particular police station on 3-1-2005. Earlier during the period 1993-94 he was A.S.I. at CRPF.Camp, Meghalaya. From 1995 to 2003, he worked as Head Constable in K.A.P.5th Batalian. In 2004, he was selected as Sub Inspector. He worked at Nilambur and Changaramkulam police stations and thereafter he was transferred to Vellalrikundu police station. It is submitted that the deceased was a happy person and on 4-1-2005 in the night he had called his wife and told her that he is on the look out for a rented house and he shall get the family to Vellarikundu. The version of the police is

that at about 10.30 p.m. on 4-1-2005 while going back to the quarters he had taken a service revolver from the station telling the A.S.I.that in the night at 2 p.m.he is going for a raid and that revolver is necessary . Around midnight he was found dead. The investigation is proceeding on the assumption that the deceased committed suicide on account of depression and that he was under treatment for migraine. The above version is not correct. He was just taking ordinary medicines for migraine. The body was found on the side of the road close to his quarters. It is unlikely that a person would have come to the road side to commit suicide. It was found that there was fabrications and additions in the G.D. A Constable was subsequently transferred with respect to the incident and departmental enquiry is in progress. It is also pointed that the particular bullet was not recovered. It is further alleged that the first informant is one Haneefa who is the driver of one Plachikkara Kunhootti who is an Abkari and P.W.D.Contractor-cum-wood merchant. The deceased had confiscated a lorry owned by the son of Plachikara Kunhootti carrying forest timber. There was clashes between the Sub Inspector and the son of Kunhootti. There was no

investigation on the above aspect. The role of Plachikara Kunhootti and his son is suspected. Representation to the Chief Minister by the wife of the deceased is produced as Ext.P4. The petitioner has also produced the news item in this regard.

2. The investigating officer, i.e.the Superintendent of Police,Crime Branch,CBCID who has investigated the matter has filed a detailed statement wherein it is mentioned that the dead body was found in the midnight at about 5 metres away from his residence on the side of the road. The services of finger print expert, police surgeon and Assistant Director, FSL were utilised at the scene of the crime. Immediately, the investigation was taken up by the then Superintendent of Police, CBCID. It is pointed out that the deceased took charge at Vellarikundu police station on 3-1-2005. On 4-1-2005 at about 8 p.m., the Contractor Varkey @ Kunhooty has informed the Sub Inspector/deceased that his lorry has been waylaid and the driver has been assaulted by a group of people at Konnakkad. The deceased and the Probationary S.I. and the police constables reached the spot. The injured lorry driver and the workers of Kunhooty was directed to be admitted to the hospital and the

others ordered to be disbursed . At about 9 p.m. the deceased told the G.D.charge H.C.589 Vijayakumar that he wanted to go to arrest a warrantee in the night and took service revolver from the store room. The deceased told the probationary S.I. that rounds are not needed as the revolver was taken just for a show. One of the constables were asked to come to his residence by 2 a.m. with police jeep. At 11.30 p.m. the driver of a tipper lorry by name Muhammed Haneefa, an employee of Kunhooty, while going in a motor cycle found one person lying injured on the road side near the S.I.'s residence. He conveyed the matter to his employer Kunhooty who in turn informed the police. The service revolver and a torch were found near the dead body. There was no indication of struggle either in the dress or the body. The gun shot injury was on the head and it appeared that he fired with his right hand in an almost perpendicular direction. One neighbour had heard the sound. On 5-1-2005, three 380 ammunitions and four 9mm ammunitions were recovered from the bag of the deceased which would show that he was having unauthorised possession of ammunitions. It appeared that he utilised one such three 380 ammunition for firing. The deceased

was under treatment of throbbing type of migraine at Brain and Spine Centre, Ernakulam. Tablets used were found in his bag during search of his residence. The Doctor who treated has stated that migraine may cause depression. Hand swab collected from the right hand of the deceased was sent to the F.S.L.for examination and the result showed that there is ample presence of Barium, copper, led, nickal and zinc in the cotton swab. Postmortem report indicated that the deceased died of gun shot injury. HC 589 Vijayakumar who was on GD charge duty at Vellarikundu police station on 4-1-2005, who made some alterations in the General Diary was placed under suspension and oral enquiry was ordered by the Superintendent of Police, Kasaragod. The final report has been filed. The investigation so far revealed that the cause of death is by gun shot .

3. It is seen that the Superintendent of CBCID, Sri Ramadasan Pothan has investigated the matter till his retirement in June 2006. It is also seen that the Head Constable Vijayakumar for making additions in the G.D.entry was punished by withholding three increments without cumulative effect.

4. On a perusal of the case diary it is seen that the

investigating officer has conducted a threadbare investigation into the matter. It is seen that the Head Constable who was in G.D.charge on coming to know of the death of the Sub Inspector incorporated the entry and that the revolver and 5 rounds have been taken by the Sub Inspector. According to him, the deceased Sub Inspector who himself took service revolver when the H.C.asked him as to the necessity to make the G.D.entry told the H.C. to record in the G.D. that he is taking the revolver and 5 rounds as if the S.I. himself is making the entry. Subsequently it was found that the entire 24 rounds of ammunitions kept in the police station was still in the stock. Hence, it was found that the deceased was having a spare ammunitions with him.

5. It is pertinent to note that it is on the next day of taking charge at the Vellarikundu police station that the incident was taken place. In the circumstances, it is unlikely that the deceased would have caused that much of enmity to anybody to see that he is done away with. In the particular incident alleged with respect to obstructing of the lorry of the Contractor Varkey @ Kunhooty, it is seen that the deceased S.I.has only helped the above Kunhooty so that the lorry and his men were saved from

the assailants. The incident was consequent on an altercation by the driver of the lorry with an autorikshaw driver and the attacking mob were the autorikshaw drivers. It is seen from the C.D.that the above Kunhooty, his son, the concerned driver etc.were exhaustively questioned. The allegations of previous confrontation etc.with the deceased S.I.and the son of Kunhooty were found not true. I find, on an examination of the C.D. that this aspect has been investigated. All the same, the present Superintendent of Police, CBCID of the area is directed to further scrutinize and verify the investigation done and that only thereafter the final report is to be filed. The writ petition is disposed of accordingly.

K.R.UDAYABHANU, JUDGE

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